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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 682

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, PETITIONERS

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court did not write an opinion. The opinion of the Court of Appeals (Pet. App. 3-17) is reported at 249 F.2d 189.

JURISDICTION

The judgment of the Court of Appeals was entered on September 25, 1957. The petition for a writ of certiorari was filed on December 23, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the United States has authority to institute this quiet title action in a United States District Court on behalf of the Pueblo of Laguna, an Indian tribe in New Mexico.

2. Whether the District Court properly enjoined, *pendente lite*, prosecution of a state court proceeding which sought to oust the Indian Pueblo and its lessee from possession of the land in dispute.

STATUTES INVOLVED

Section 12 of the Act of June 30, 1834, 4 Stat. 729, 730, 25 U.S.C. 177, provides:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. * * *

Section 17 of the Pueblo Lands Board Act of June 7, 1924, 43 Stat. 636, 641, provides:

> No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo

Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

28 U. S. C. 2283 provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT

The facts of this case, which concerns a preliminary injunction restraining prosecution of a state court action instituted by petitioners, are stated in some detail in the opinion of the Court of Appeals (Pet. App. 3-9). They may be briefly summarized as follows:

The complaint of the United States in the District Court alleges that the Pueblo of Laguna is an Indian Nation which owned a tract of land known as the Paguate Purchase, prior to the Treaty of Guadalupe Hidalgo in 1848; title to this land was confirmed in the Pueblo by Act of Congress in 1860 and a patent executed in 1884; by an Act of 1924, Congress Created the Pueblo Lands Board which resolved various conflicts between the claims of the Pueblo under the Paguate Grant and other claimants; pursuant to the 1924 Act, suit was brought in the New Mexico federal District Court resulting in a decree resolving the conflicts by quieting title in the Pueblo to 51,578.19 acres and in other claimants to described acreages;

subsequently, the Pueblo bought some of those other lands in 1936, 1937 and 1939. In 1951 and 1952, almost 800 acres of the lands within the 51,000 acre area were, with the approval of the Department of the Interior, leased by the Pueblo to The Anaconda Company for uranium mining purposes; an ore processing plant has been established under contract with the Atomic Energy Commission; and royalties of some $2,900,000 have been paid to the Pueblo.

In January 1957 petitioners, claiming those lands, filed a suit in ejectment in a New Mexico state court (a suit known as State-8016), seeking to recover possession and damages from the Pueblo, its officials, and from Anaconda.

About a month later, the present suit was filed by the United States in the federal District Court against petitioners and Anaconda. In addition to the allegations outlined above, the complaint also asserted that the Pueblo was a dependent Indian community and that its lands owned in fee are subject to restrictions upon alienation without the consent of the United States. As to the 51,000 acres and the three tracts purchased by the Pueblo, the complaint asserted that the Pueblo has fee title and that the claims of the defendants *i.e.*, the petitioners in this Court, constitute a cloud thereon.

In connection with its request for an injunction against prosecution of the state court action, the complaint alleged that the defendants seek to oust the Pueblo from lands to which it has title and possession under the guardianship of the United States; that the Government cannot be made a party to State-

8016; and that all interested parties are before the federal court and will be bound by that court's decree. In support of the motion for a preliminary injunction, there was introduced a copy of the court decree entered pursuant to the 1924 Act and also an affidavit of the Acting Director for Domestic Procurement of the Atomic Energy Commission describing the activities of Anaconda and the importance of the uninterrupted continuance of production to the Commission's program and the national defense.

The District Court announced its decision to issue a preliminary injunction in the following terms (R. 61):

> I don't care whether it is Guardianship, a Ward, Trustee, a *cestui que* trust, or the Protector, over these Tribes, the United States of America, I think, has sufficient interest to maintain the suit and secure this Injunction. I will resist the allure offered by Mr. Ortega [of counsel for petitioners], of emancipating, as he says, the Laguna Pueblo. They haven't asked me to. I doubt if I could, I don't think they would want to pay $31,000,000 [1] to be emancipated, either, right now. We will leave it up to our friends in Congress.

The Court of Appeals affirmed the grant of the injunction (Pet. App. 3a-17a).

ARGUMENT

There is presented at this time only the limited issue raised by the issuance of the preliminary in-

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[1] This is the amount of damages claimed in State-8016.

junction against the prosecution of the state court action. Though variously phrased, petitioners' contentions are mainly bottomed on the single proposition that the United States has no standing or right to institute this action.[2] The federal District Court has, of course, jurisdiction (in the strictest sense) of every case instituted by the United States, 28 U.S.C. 1345. Accordingly, petitioners can prevail only by showing that, although the court has jurisdiction, the allegations of the complaint as to the interest of the United States cannot possibly be sustained and must be rejected on their face.

1. (*a*). The standing of the United States to quiet title in the Pueblo of Laguna to land included in the Paguate purchase or grant is established by *United States* v. *Candelaria*, 271 U.S. 432, 16 F. 2d 559. This Court there discussed at length the history of the New Mexico Pueblos as well as the earlier decisions, especially *United States* v. *Sandoval*, 231 U.S. 28, and concluded (271 U.S. at 443-444):

> The Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without its consent. A judgment or decree which operates directly or indirectly to

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[2] Thus, petitioners say that in State-8016 "No federal question was involved" (Pet. 5), that "no item in the complaint invited a controversy with the Federal Government" (Pet. 5-6), that the action "did not involve federal lands" (Pet. 6). Elsewhere, they say "It is not clear what place, if any, the United States has in this litigation" (Pet. 18), and that this is a "private controversy between Indians" (Pet. 27).

> transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction. The United States has an interest in maintaining and enforcing the restriction which cannot be affected by such a judgment or decree.

The Court summarized the meaning of its earlier *Sandoval* decision as follows (p. 440):

> While we recognized in that case that the Indians of each pueblo, collectively as a community, have a fee simple title to the lands of the pueblo (other than such as are occupied under executive orders), we held that their lands, like the tribal lands of other Indians owned in fee under patents from the United States, are "subject to the legislation of Congress enacted in the exercise of the Government's guardianship" over Indian tribes and their property.

As the Court of Appeals held (Pet. App. 11-12), the Pueblo lands are restricted against alienation without the consent of the United States both by virtue of the terms of the Act of June 30, 1834, applicable to "any Indian nation or tribe of Indians", and by the express provision of Section 17 of the Act of June 7, 1924, which, *inter alia*, created the Pueblo Lands Board (see *supra*, pp. 2-3).

(*b*). Petitioners attempt in several ways to answer these established doctrines and plain statutory provisions. First, they seek in effect, without explicitly saying so, to overrule the *Candelaria* and *Sandoval* cases; but the rule of these decisions is too well-settled in Indian law to be overturned at this late date. Petitioners likewise would delete from the 1924 Act

(*supra*, pp. 2-3) the explicit provision that no conveyance of any title, etc. "shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior", by resort to the argument that the New Mexico Enabling Act of 1910 placed the lands in suit forever beyond the authority of the Federal Government. But the opinion of the Tenth Circuit below (Pet. App. 13a-15a) shows that —particularly in the light of the earlier 1834 Act (*supra*, p. 2)—the New Mexico Enabling Act did not treat these Indian lands differently from other Indian lands, and that if the 1910 Enabling Act did purport to do so the subsequent 1924 Act validly reasserted the power of the United States.[3] The District Court correctly epitomized this case in saying that whether the Pueblo should be emancipated is a question to be left to Congress.

Petitioners' other arguments are equally unavailing. They cite (Pet. 21-22) *United States* v. *Conway*, 175 U.S. 60 and *United States* v. *Baca*, 184

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[3] These are issues peculiar to New Mexico, and they have been decided adversely to petitioners by the District Court for that state, and by a division of the Tenth Circuit which included two circuit judges from that state.

The brief for the State of New Mexico as *amicus curiae* confuses questions of jurisdiction of particular lands for purposes such as criminal laws, taxation, etc. with the question of restrictions against alienation of Indian lands. The power to impose such restrictions arises out of the special relationship between the United States and the Indians and does not rest on exclusive federal territorial jurisdiction. Thus, the discussion by the State of New Mexico (pp. 6-8) of cessions of exclusive jurisdiction has nothing to do with the present case.

U.S. 653, but these were proceedings in the Court of Private Land Claims relating to fee title and posed no issue as to whether title of a Pueblo would be restricted against alienation. So also, there is no inconsistency, as claimed in the petition, with cases before the Indian Claims Commission (Pet. 19-20). There is a vast difference between "the power and the duty of exercising a fostering care and protection over all dependent Indian communities" (*United States* v. *Sandoval*, 231 U.S. 28, 46), the basis of the present case, and the existence of a technical guardian-and-ward relationship such as to render the United States liable to the tribes by application of guardianship law, which was the subject of the Indian Claims Commission cases cited by petitioners. This is made perfectly clear in *Sioux Tribe of Indians* v. *United States*, 146 F. Supp. 229 (Ct. Cls.), where the Court of Claims said (p. 237): "While it has often been said by this court and the Supreme Court that the general relationship of the Government to the Indians of the United States is *similar* [emphasis by the court] to that of a guardian and ward, it has never been held that such a general relationship amounts to a legal guardian-ward relationship in the absence of some specific language to that effect in a treaty, agreement, or Act of Congress."

2. Once the authority of the United States to enforce by quiet title proceedings the rights of the Pueblo is established, the propriety of the injunction is governed by *Leiter Minerals, Inc.*, v. *United States*, 352 U.S. 220. Petitioners seek to put that decision aside because it involved property claimed

by the United States (Pet. 12-15). But the government interest in land the fee title to which is vested in Indians is as clear as if the fee were in the United States. *United States* v. *Hellard*, 322 U.S. 363, and cases there cited (Pet. App. 16). As the Court of Appeals declared (Pet. App. 17), "Indeed, since the United States is suing as a guardian of a dependent nation in discharge of a fiduciary duty, its right and duty to protect the interests of its wards may be even greater than it would if it were suing in its own behalf with respect to its own lands."

As in the *Leiter* case, any judgment rendered by the state court could not bind the United States. *United States* v. *Candelaria*, 271 U.S. 432; *Choctaw and Chickasaw Nations* v. *Seitz*, 193 F.2d 456 (C.A. 10). Only the federal case will finally determine the basic issue. Thus, the same factors justifying issuance of an injunction in *Leiter* are present here. In fact, the instant case is a stronger one than *Leiter* since there is no issue which in any way depends on state law. The petitioners' claim to title rests on events long prior to statehood—they allege rights fixed "by transactions antedating the Treaty of Guadalupe Hidalgo by almost a century" (Pet. 6). Other federal issues are the effect of the Pueblo Land Board decision and the earlier decree of the federal District Court (*supra*, pp. 3-4). A further reason why adjudication of this case by the federal court is called for is the very fact that restricted Indian lands are involved. "The judicial determination of controversies concerning such lands has been commonly committed

exclusively to federal courts." *Minnesota* v. *United States*, 305 U.S. 382, 389.

These considerations, as well as the *Leiter* decision itself, are the answer to petitioners' discussion of comity (Pet. 7, 10), as well as their charge that here the United States is "shopping around" for a favorable forum (Pet. 8, 35). The fact is that institution of suit in the federal court was in accord with consistent policy, especially because of the expertness of the federal courts, including the Court of Appeals for the Tenth Circuit, in this specialized field of Indian law. Only the federal court can give complete relief and, as in *Leiter*, it properly exercised its jurisdiction to prevent state court proceedings that might conflict with its judgment.

CONCLUSION

The decision below is plainly right; it is in accord with this Court's recent *Leiter* decision; and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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